

OKLAHOMA STATUTES ANNOTATED  
TITLE 12. CIVIL PROCEDURE  
CHAPTER 25. LIBEL AND SLANDER  
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Current through End of 1998 1st Ex. Sess.

s 1448. Deceased personality's right of publicity--Unauthorized use-- Claims--Exemptions

A. Any person who uses a deceased personality's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without prior consent from the person or persons specified in subsection C of this section, shall be liable for any damages sustained by the person or persons injured as a result thereof, and any profits from the unauthorized use that are attributable to the use shall be taken into account in computing the actual damages. In establishing these profits, the injured party or parties shall be required to present proof only of the gross revenue attributable to the use and the person who violated this section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party or parties in any action under this section shall also be entitled to attorney's fees and costs.

B. The rights recognized under this section are property rights, freely transferable, in whole or in part, by contract or by means of trust or testamentary documents, whether the transfer occurs before the death of the deceased personality, by the deceased personality or his or her transferees, or, after the death of the deceased personality, by the person or persons in whom such rights vest under this section or the transferees of that person or persons.

C. The consent required by this section shall be exercisable by the person or persons to whom such right of consent (or portion thereof) has been transferred in accordance with subsection B of this section, or if no such transfer has occurred, then by the person or persons to whom such right of consent (or portion thereof) has passed in accordance with subsection D of this section.

D. Subject to subsections B and C of this section, after the death of any person, the rights under this section shall belong to the decedents' spouse, issue, or parents in accordance with Section 213 of Title 84 of the Oklahoma Statutes. Said rights shall be exercised on behalf of and for the benefit of all those persons, by those persons who, in the aggregate, are entitled to more than a one-half ( 1/2 ) interest in such rights.

E. If any deceased personality does not transfer his or her rights under this section by contract, or by means of a trust or testamentary document, and there are no surviving persons as described in subsection D of this section, then the rights set forth in subsection A of this section shall terminate.

F. 1. A successor-in-interest to the rights of a deceased personality under this section or a licensee thereof may not recover damages for a use prohibited by this section that occurs before the successor-in-interest or licensee registers a claim of the rights under paragraph 2 of this subsection.

2. Any person claiming to be a successor-in-interest to the rights of a deceased personality under this section or a licensee thereof may register that claim with the Secretary of State on a form prescribed by the Secretary of State and upon payment of a fee of Ten Dollars (\$10.00). The form shall be verified and shall include the name and date of death of the deceased personality, the name and address of the claimant, the basis of the claim, and the rights claimed.

3. Upon receipt and after filing of any document under this section, the Secretary of State may microfilm or reproduce by other techniques any of the filings or documents and destroy the original filing or document. The microfilm or other reproduction of any document under the provision of this section shall be admissible in any court of law. The microfilm or other reproduction of any document may be destroyed by the Secretary of State fifty (50) years after the death of the personality named therein.

4. Claims registered under this subdivision shall be public records.

G. No action shall be brought under this section by reason of any use of a deceased personality's name, voice, signature, photograph, or likeness occurring after the expiration of one hundred (100) years from the death of the deceased personality.

H. As used in this section, "deceased personality" means any natural person whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death, whether or not during the lifetime of that natural person the person used his or her name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods, or services. A "deceased personality" shall include, without limitation, any such natural person who has died within fifty (50) years prior to January 1, 1986.

I. As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the deceased personality is readily identifiable. A deceased personality shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine who the person depicted in the photograph is.

J. For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subsection A of this section.

K. The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subsection A of this section solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the deceased personality's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subsection A of this section.

L. Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the deceased personality's name, voice, signature, photograph, or likeness as prohibited by this section.

M. The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

N. This section shall not apply to the use of a deceased personality's name, voice, signature, photograph, or likeness, in any of the following instances:

1. A play, book, magazine, newspaper, musical composition, exhibit, display, film, radio or television program, other than an advertisement or commercial announcement not exempt under paragraph 4 of this subsection;
2. Material that is of political or newsworthy value;
3. Single and original works of fine art; and
4. An advertisement or commercial announcement for a use permitted by paragraph 1, 2 or 3 of this subsection.

CREDIT

CREDIT(S)

1993 Main Volume

Laws 1985, c. 159, s 1, eff. Jan. 1, 1986.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES -- HISTORICAL AND STATUTORY NOTES

HISTORICAL AND STATUTORY NOTES

1993 Main Volume

Section 3 of Laws 1985, c. 159 provides for severability.

Title of Act:

An Act relating to civil procedure; creating certain rights for heirs of a deceased personality's right of publicity; defining successors-in-interest; providing for filing of claims as successors-in-interest; defining terms; establishing exceptions; providing for penalties; providing for codification; providing severability; and providing an effective date. Laws 1985, c. 159.

#### REFERENCES -- LAW REVIEW AND JOURNAL COMMENTARIES

##### LAW REVIEW AND JOURNAL COMMENTARIES

Oklahoma's right of publicity laws. Lucian Wayne Beavers, 57 Okla.B.J. 2612 (1986).

#### REFERENCES -- LIBRARY REFERENCES

##### LIBRARY REFERENCES

1993 Main Volume

Torts k8.5(6).

Trade Regulation k862.1.

WESTLAW Topic Nos. 379, 382.

C.J.S. Right of Privacy s 45.

C.J.S. Trade-Marks, Trade-Names, and Unfair Competition s 237.

12 Okl. St. Ann. s 1448

OK ST T. 12 s 1448

OK ST T. 12 s 1449  
12 Okl.St. Ann. s 1449

TEXT

OKLAHOMA STATUTES ANNOTATED  
TITLE 12. CIVIL PROCEDURE  
CHAPTER 25. LIBEL AND SLANDER  
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Current through End of 1998 1st Ex. Sess.

s 1449. Unauthorized use of another person's rights of publicity--Damages-- Consent--  
Presumptions--Fact questions--Exemptions

A. Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without such person's prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof, and any profits from the unauthorized use that are attributable to the use shall be taken into account in computing the actual damages. In establishing such profits, the injured party or parties are required to present proof only of the gross revenue attributable to such use, and the person who violated this section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party in any action under this section shall also be entitled to attorney's fees and costs.

B. As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the person is readily identifiable.

1. A person shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine that the person depicted in the photograph is the same person who is complaining of its unauthorized use.

2. If the photograph includes more than one person so identifiable, then the person or persons complaining of the use shall be represented as individuals rather than solely as members of a definable group represented in the photograph. A definable group includes, but is not limited to, the following examples: A crowd at any sporting event, a crowd in any street or public building, the audience at any theatrical or stage production, a glee club, or a baseball team.

3. A person or persons shall be considered to be represented as members of a definable group if they are represented in the photograph solely as a result of being present at the time the photograph was taken and have not been singled out as individuals in any manner.

C. Where a photograph or likeness of an employee of the person using the photograph or likeness appearing in the advertisement or other publication prepared by or in behalf of the user is only incidental, and not essential, to the purpose of the publication in which it appears, there shall arise a rebuttable presumption affecting the burden of producing evidence that the failure to obtain the consent of the employee was not a knowing use of the employee's photograph or likeness.

D. For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subsection A of this section.

E. The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subsection A of this section solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the person's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subsection A of this section.

F. Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the person's name, voice, signature, photograph, or likeness as prohibited by this section.

G. The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

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1993 Main Volume

Laws 1985, c. 159, s 2, eff. Jan. 1, 1986.

<General Materials (GM) - References, Annotations, or Tables>

REFERENCES -- LAW REVIEW AND JOURNAL COMMENTARIES

LAW REVIEW AND JOURNAL COMMENTARIES

Oklahoma's right of publicity laws. Lucian Wayne Beavers, 57 Okla.B.J. 2612 (1986).

Right of Publicity: Cardtoons, L.C. v. Major League Baseball Players Association. 51 Okla.L.R. 159 (1998).

## REFERENCES -- LIBRARY REFERENCES

### LIBRARY REFERENCES

1993 Main Volume

Torts k8.5(6).

WESTLAW Topic No. 379.

C.J.S. Right of Privacy s 4.5.

## ANNOTATIONS -- NOTES OF DECISIONS

### NOTES OF DECISIONS

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ANNOTATIONS (Notes of Decisions Index )

1/4. Validity

In context of intellectual property, "no adequate alternative avenues" test, under which property rights need not yield to

exercise of First Amendment rights under circumstances where adequate alternative avenues of communication exist, does not

sufficiently accommodate public's interest in free expression. Cardtoons, L.C. v. Major League Baseball Players Ass'n, C.A.10

(Okla.)1996, 95 F.3d 959, 39 U.S.P.Q.2d 1865.

Parody trading card producer's First Amendment right to free expression outweighed baseball players association's right of

publicity; cards were an important form of entertainment and social commentary that deserved First Amendment protection.

Cardtoons, L.C. v. Major League Baseball Players Ass'n, C.A.10 (Okla.)1996, 95 F.3d 959, 39 U.S.P.Q.2d 1865.

1/2. In general

Under Oklahoma law, parody trading card producer's use of baseball player likenesses on its cards violated right of publicity

statute. Cardtoons, L.C. v. Major League Baseball Players Ass'n, C.A.10 (Okla.)1996, 95 F.3d 959, 39 U.S.P.Q.2d 1865.

Application of right of publicity statute that allegedly imposed restrictions on right of free expression satisfied state action

requirement of parody trading card producer's First Amendment claim in its declaratory judgment action against baseball players association. *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, C.A.10 (Okla.)1996, 95 F.3d 959, 39 U.S.P.Q.2d 1865.

Balancing analysis utilized in trademark law was not applicable to claim that parody trading cards of active major league baseball players infringed on rights of publicity under Oklahoma law; trademark analysis was predominantly concerned with issue of likelihood of confusion, and likelihood of confusion between parody cards and authorized baseball cards was minimal. *Cardtoons v. Major League Baseball Players Ass'n*, N.D.Okla.1994, 868 F.Supp. 1266, affirmed 95 F.3d 959, 39 U.S.P.Q.2d 1865.

#### 1. Likeness

"Likeness" within meaning of Oklahoma's right to publicity statute rendering a person liable for damages if he knowingly uses another's likeness in any manner, on or in products, without the person's prior consent, means any recognizable likeness.

*Cardtoons, L.C. v. Major League Baseball Players Ass'n*, N.D.Okla.1993, 838 F.Supp. 1501, set aside, report and recommendation rejected 868 F.Supp. 1266, affirmed 95 F.3d 959, 39 U.S.P.Q.2d 1865.

#### 2. Defenses

Company which manufactured parody trading cards of active major league baseball players did not have defense to violation of

Oklahoma's right to publicity statute for use of photograph or likeness in connection with any news, public affairs, or sport

broadcast or account or any political campaign or for use of photograph or likeness in commercial media when material containing the

use is commercially sponsored or contains paid advertising. *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, N.D.Okla.1993,

838 F.Supp. 1501, set aside, report and recommendation rejected 868 F.Supp. 1266, affirmed 95 F.3d 959, 39 U.S.P.Q.2d 1865.

### 3. Injunction

Although unincorporated association that served as exclusive collective bargaining agent for all major league baseball players established likelihood of prevailing on merits of its claim that parody trading cards of active major league baseball players violated Oklahoma right to publicity statute, unincorporated association was not entitled to preliminary injunctive relief; unincorporated association's claim of irreparable harm was without merit inasmuch as there was an adequate remedy at law under Oklahoma statute. *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, N.D.Okla.1993, 838 F.Supp. 1501, set aside, report and recommendation rejected 868 F.Supp. 1266, affirmed 95 F.3d 959, 39 U.S.P.Q.2d 1865.

### 4. Purpose

Purpose of Oklahoma's right to publicity statute is to protect individuals, celebrities or otherwise, from having distinguishing characteristics of their persons exploited, to commercial benefit of another. *Cardtoons v. Major League Baseball Players Ass'n*, N.D.Okla.1994, 868 F.Supp. 1266, affirmed 95 F.3d 959, 39 U.S.P.Q.2d 1865.

### 5. Fair use

Fair use analysis employed in copyright law was applicable to claim that parody trading cards of active major league baseball players infringed on rights of publicity under Oklahoma law. *Cardtoons v. Major League Baseball Players Ass'n*, N.D.Okla.1994, 868 F.Supp. 1266, affirmed 95 F.3d 959, 39 U.S.P.Q.2d 1865.

Manufacturer's trading cards which parodied baseball cards were fair use of rights of publicity which were given by Oklahoma statute to unincorporated association that served as exclusive collective bargaining agent for all major league baseball players; although cards were commercial in nature, they were not designed to advertise other products, cards did not use more of players' likenesses than was necessary to accomplish parodic purpose, and parody cards would not likely displace market demand for authorized baseball cards. *Cardtoons v. Major League Baseball Players Ass'n*, N.D.Okla.1994, 868 F.Supp. 1266, affirmed 95 F.3d 959, 39 U.S.P.Q.2d 1865.

Factor of fair use analysis under copyright law which assesses nature of copyrighted work was inapplicable to fair use analysis employed in determining whether parody trading cards violated baseball players' rights of publicity under Oklahoma statute. *Cardtoons v. Major League Baseball Players Ass'n*, N.D.Okla.1994, 868 F.Supp. 1266, affirmed 95 F.3d 959, 39 U.S.P.Q.2d 1865.

### 6. Parody

Parody trading cards that contained caricatures of baseball players and commentary on players and enterprise in which they worked



were entitled to First Amendment protection, even though cards provided humorous rather than serious commentary. *Cardtoons, L.C.*

*v. Major League Baseball Players Ass'n*, C.A.10 (Okla.)1996, 95 F.3d 959, 39 U.S.P.Q.2d 1865.

Whether recognition of defense of parody as to trading cards which parodied baseball cards would open "floodgate" of other commercial products was inappropriate factor to consider in balancing First Amendment rights of manufacturer of parody cards against rights of baseball players' association under Oklahoma right to publicity statute.

*Cardtoons v. Major League Baseball*

*Players Ass'n*, N.D.Okla.1994, 868 F.Supp. 1266, affirmed 95 F.3d 959, 39 U.S.P.Q.2d 1865.

12 Okl. St. Ann. s 1449

OK ST T. 12 s 1449

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